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6 Attorneys for the United States of America

**FILED**  
DISTRICT COURT OF GUAM  
MAR 13 2007 *nba*  
MARY L.M. MORAN  
CLERK OF COURT

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE TERRITORY OF GUAM

10 AMERICOPTERS, LLC,

11 Plaintiff,

12 vs.

13 FEDERAL AVIATION  
14 ADMINISTRATION,

15 Defendant.

CIVIL CASE NO. 03-00005

**AMENDED MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM OR, IN  
THE ALTERNATIVE, TO TRANSFER**

16  
17 The United States respectfully moves for the dismissal of the above entitled case because  
18 the Plaintiff fails to state a claim upon which relief may be granted. In the alternative, Defendant  
19 requests that this Court transfer this action to the Court of Federal Claims.  
20

21 STATEMENT OF THE CASE

22 I. Nature Of The Case

23 Plaintiff, Americopters, LLC, filed a complaint in this Court alleging that the Federal  
24 Aviation Administration ("FAA") had violated 14 C.F.R. § 13.20(b) and had committed a  
25 regulatory taking of its property in violation of the Fifth Amendment to the Constitution. After  
26 defendant filed a motion to dismiss, this Court dismissed the complaint by memorandum order  
27 dated December 29, 2003 because the Court lacked jurisdiction.  
28

1 Americopters appealed to the Ninth Circuit. The Court of Appeals affirmed in part, but  
2 reversed the dismissal of the takings claim and remanded to this Court. Americopters, LLC v.  
3 FAA, 441 F.3d 726, 738 (9<sup>th</sup> Cir. 2006). The court of appeals ruled that Americopters' takings  
4 claim was not inescapably intertwined with an administrative challenge to an FAA order because  
5 there was no pending FAA order and no previous agency determination on the merits. Id.  
6 Americopters subsequently filed its First Amended Complaint and the United States has  
7 answered the Complaint. Plaintiff's disclosures allege a takings claim in excess of \$10,000  
8 (Exhibit 1).

9  
10 II. Statement Of Facts

11 The following facts are taken from Americopters' complaint. We presume them to be  
12 true for purposes of this motion only.

13 Americopters ran a helicopter tour business from a rooftop helipad at a restaurant,  
14 Chuck's Steak House ("Chuck's"), in Guam. Complaint ("Co.") at ¶ 5. In February 2002,  
15 Clarence Kanae, Principal Operations Inspector for the FAA's regional flight standards office,  
16 inspected the helipad at Chuck's. Id. According to Americopters, during that visit, Mr. Kanae  
17 verbally identified a number of deficiencies of the helipad but never documented these concerns.  
18 Id. at ¶ 6. Americopters wrote a letter to Mr. Kanae to "clarify and confirm with you all of the  
19 changes that you would like us to make to ... Chuck's" and provided him a list of improvements  
20 Americopters intended to make. Co. at ¶7, and Exhibit ("Ex.") A to the Complaint.

21 On June 24, 2002, Americopters received a letter from Mr. Kanae that stated:

22  
23 This letter is to inform you that the use of the roof top as a helicopter-pad, at  
24 Chuck's Steak House, is considered unsafe, and does not meet the [FAA]  
25 Advisory Circular 150-5390-2A Heliport Design requirements. This AC is  
26 [a]dvisory in nature; however, this office feels that [14 C.F.R. § 91.13] will apply  
to this operation if the AC is not followed. Therefore, this office is requiring that  
your company immediately cease use of the Chuck's Steak House rooftop for all  
flight operations.

27 Co. at ¶ 10, and Ex. B to the Complaint.

28 On August 13, 2002, counsel for Americopters wrote to the FAA alleging that Mr.

1 Kanae's letter ordered it to cease operations without prior notice in violation of 14 C.F.R. §  
2 13.20(b). (Exhibit 2). Americopters requested rescission of the cease operations order,  
3 confirmation that planned improvements to the helipad at Chuck's would comply with FAA  
4 regulations, and 90 days to install improvements approved by the FAA. Id. In the alternative,  
5 Americopters requested a hearing pursuant to § 13.20(c). Id.

6 The Court of Appeals and the FAA agree that Mr. Kanae did not have the authority to  
7 issue orders upon behalf of the FAA. Americopters, 441 F.2d at 737.

8 Plaintiff's Amended Complaint now claims a constitutional taking by the FAA.  
9 Complaint at ¶ 18.

## 10 11 ARGUMENT

### 12 I. Standard Of Review

13 A complaint may be dismissed for failure to state a claim pursuant to Federal Rule of  
14 Civil Procedure 12(b)(6) if it "appears beyond doubt that the non-movant can prove no set of  
15 facts to support its claims." Simpson v. AOL Time Warner Inc., 452 F.3d 1040, 1046 (9th  
16 Cir.2006). Alternatively, dismissal can be based upon the lack of a cognizable legal theory.  
17 SmileCare Dental Group v. Delta Dental Plan of Cal., Inc., 88 F3d 780, 783 (9th Cir.1996). In  
18 evaluating such a motion "[a]ll allegations and reasonable inferences are taken as true, and the  
19 allegations are construed in the light most favorable to the non-moving party, but conclusory  
20 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss."  
21 Simpson, 452 F.3d at 1046.

### 22 23 II. The United States Is Not Liable For The Unauthorized Actions Of Its Employees

24 The Little Tucker Act, 28 U.S.C. § 1346(a)(2), confers jurisdiction upon a district court to  
25 consider takings claims against the Government that do not exceed \$10,000. When district court  
26 jurisdiction is based upon the Little Tucker Act, final decisions of the court are appealed to the  
27 United States Court of Appeals for the Federal Circuit. 28 U.S.C. § 1295(a)(2).

28 "A 'taking' occurs when the Government exercises its proper contract, property or

1 regulatory power to control property or rights which it does not acquire through purchase."  
2 Torres v. United States, 15 Cl. Ct. 212, 215 (1988). The Government may not take private  
3 property for public use without providing just compensation. First English Evangelical Lutheran  
4 Church of Glendale v. County of Los Angeles, 482 U.S. 304, 314-15 (1987).

5 Under some circumstances, regulatory action infringing upon private property without  
6 providing just compensation is invalidated on the basis that it "goes too far." Hodel v. Irving,  
7 481 U.S. 704, 718 (1987). However, the "Government hardly could go on if to some extent  
8 values incident to property could not be diminished without paying for every such change in the  
9 general law." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922). "The general rule at  
10 least is, that while property may be regulated to a certain extent, if regulation goes too far it will  
11 be recognized as a taking." Id. at 415. The "Fifth Amendment's guarantee . . . [is] designed to  
12 bar Government from forcing some people alone to bear public burdens which, in all fairness and  
13 justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49  
14 (1960).

15 A threshold issue in a takings case is whether the taking is based upon authorized  
16 Government conduct. Regional Rail Reorganization Act Cases, 419 U.S. 102, 126-27 n.16  
17 (1974); Robert A. Hooe v. United States, 218 U.S. 322 (1910); Short v. United States, 50 F.3d  
18 994, 1000 (Fed. Cir. 1995). The plaintiff bears the burden of proving authority as an element of a  
19 cause of action for just compensation. Coast Indian Community v. United States, 550 F.2d 639,  
20 649 (Ct. Cl. 1977).<sup>1</sup> The act at issue must be "authorized, expressly or by necessary implication, .  
21 . . by some act of Congress," in order for the Government to be liable for a taking. Regional Rail  
22 Reorganization Act Cases, 419 U.S. at 127 n.16 (quoting Hooe, 218 U.S. at 336).

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23  
24 <sup>1</sup> The Court of Claims is the predecessor court to the Federal Circuit. In South Corp. v.  
25 United States, 690 F.2d 1368, 1370 (Fed. Cir.1982), the Federal Circuit adopted the precedent of  
26 the Court of Claims.  
27  
28

1 Here, both the Circuit Court and the FAA agree that Mr. Kanae's actions were not  
2 authorized. Americopters, 441 F.2d at 737. The fact that the actions were unauthorized is fatal  
3 to Americopters case. Because the actions were unauthorized, Americopters complaint fails to  
4 state a claim upon which relief may be granted. E.g., Regional Rail Reorganization Act Cases,  
5 419 U.S. at 127 n.16. Accordingly, the Court should dismiss the complaint.

6  
7 III. In The Alternative, This Court Should Transfer This Action To The Court Of Federal  
8 Claims Because To Limit Its Claimed Damages Are Greater Than \$10,000

9 The Federal transfer statute provides in relevant part:

10 Whenever a civil action is filed in a court ... and that court finds that there is a  
11 want of jurisdiction, the court shall, if it is in the interest of justice, transfer such  
action or appeal to any other such court in which the action or appeal could have  
been brought at the time it was filed or noticed ....

12 28 U.S.C. § 1631.

13 The determination as to whether a district court or the Court of Federal Claims possesses  
14 jurisdiction to consider a takings claim depends upon the amount in controversy. As we stated  
15 above, this Court may consider a takings claim if the plaintiff seeks no more than \$10,000 in  
16 damages. 28 U.S.C. § 1346(a)(2). If the plaintiff seeks more than \$10,000, the Court of Federal  
17 Claims possesses exclusive jurisdiction to consider the action. Eastern Enterprises v. Apfel, 524  
18 U.S. 498, 520 (1998). The Plaintiff in this action is claiming damages in excess of \$10,000.

19  
20 CONCLUSION

21 Plaintiff claims a constitutional taking by the agency based on alleged actions by an FAA  
22 employee. That employee was without authority. For a taking to occur by matter of an act of a  
23 government employee that act must be accomplished within the scope of his statutory or  
24 delegated authority. "Absent such a showing, there can only be a tortious trespass, for which the  
25 Fifth Amendment does not require compensation by the sovereign." Coast Indian Community v.  
26 United States, 213 Ct. Cl. 129, 550 F. 2d 639 (1977). In this instance, Plaintiff has no set of  
27 facts which could support a Fifth Amendment taking claim against the sovereign. Therefore, the  
28 Complaint should be dismissed.

1 In the alternative, Plaintiff's constitutional taking claim against the United States in  
2 excess of \$10,000 places jurisdiction exclusively in the U.S. Court of Claims and the case must  
3 be transferred to that Court.

4  
5 Respectfully submitted this 13<sup>th</sup> day of March 2007.

6  
7 LEONARDO M. RAPADAS  
8 United States Attorney  
9 District of Guam and CNMI

10 By: 

11 MIKEL W. SCHWAB  
12 Assistant U.S. Attorney  
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CARLSMITH BALL LLP

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Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Plaintiff  
Americopters, L.L.C.

US Attorney's Office  
Districts of Guam & NMI

NOV 22 2006

Time \_\_\_\_\_  
Receiving name \_\_\_\_\_  
Date keyed in Dbase 11/22  
Entered into Dbase by: AF

Rec'd in USAO  
Civil Division  
Nov. 29, 2006

IN THE DISTRICT COURT OF GUAM

AMERICOPTERS, L.L.C.,

Plaintiff,

vs.

FEDERAL AVIATION ADMINISTRATION,

Defendant.

CIVIL CASE NO. CIV03-00005

**PLAINTIFF'S SUPPLEMENTAL  
INITIAL DISCLOSURES;  
DECLARATION OF SERVICE**

Plaintiff Americopters, L.L.C. hereby provides the following supplemental initial disclosures pursuant to Federal Rules of Civil Procedure 26(a)(1).

A. Persons with Discoverable Information:

[....]

B. Documents:

[....]

See the attached documents.

C. Damages:

[....]

GOVERNMENT  
EXHIBIT

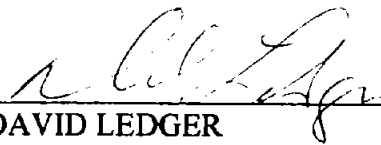
1

**COPY**

Please refer to the attached documents for losses Americopters sustained as a result of the action taken by the FAA.

DATED: Hagåtña, Guam, November 22, 2006.

CARLSMITH BALL LLP

  
\_\_\_\_\_  
DAVID LEDGER  
ELYZE J. MCDONALD  
Attorneys for Plaintiff  
Americopters, L.L.C.



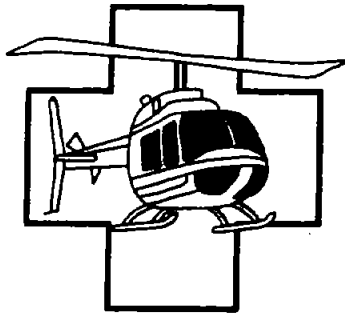
**DECLARATION OF SERVICE**

I, David Ledger, hereby declare under penalty of perjury of the laws of the United States, that on November 22, 2006, I will cause to be served, via hand delivery, a true and correct copy of PLAINTIFF'S *SUPPLEMENTAL* INITIAL DISCLOSURES; DECLARATION OF SERVICE upon the following Counsels of record:

Mikel W. Schwab  
Assist U.S. Attorney  
OFFICE OF THE UNITED STATES ATTORNEY  
DISTRICT OF GUAM AND CNMI  
108 Hernan Cortez Avenue  
Hagåtña, Guam USA 96910  
**Attorneys for Plaintiff United States of America**

Executed this 22 day of November 2006 at Hagåtña, Guam.

  
\_\_\_\_\_  
DAVID LEDGER



# Americopters

***An FAA Approved Air Carrier & Air Ambulance***

P. O. Box 9099 ~ Tamuning, Guam, 96931 ~Tel: (671) 649-4664

Fax: (671) 649-4675 ~ email: [americopters@guam.net](mailto:americopters@guam.net)

P. O. Box 1160 ~ Koblerville, Saipan, MP 96950 ~Tel: (670) 234-1304

Fax: (670) 288-6369 ~ email: [americopters@saipan.com](mailto:americopters@saipan.com)

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|   |                 |
|---|-----------------|
| Loss of Flight Revenue (7-12/02 ^ 7-12/03): | \$20,249.81     |
| Decrease in Sales (1-6/02 ^ 1-6/03):        | \$26,615.81     |
| Merchandise Losses:                         | \$ 6,500.00     |
| Rent:                                       | \$14,334.00     |
| Additional Insurance:                       | \$ 7,190.75     |
| Enstrom shipping and resale loss:           | \$20,000.00     |
| <br>Total:                                  | <br>\$94,890.37 |



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001000

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 6/20/2002  
Order No.  
Rep  
FOB

### Qty

### Description

### Unit Price

### Office Space and Helicopter Pad Rental

|   |                         |          |          |
|---|-------------------------|----------|----------|
| 1 | June 24 - June 30, 2002 | \$584.00 | \$584.00 |
|---|-------------------------|----------|----------|

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$584.00  
Shipping & Handling  
Taxes

**TOTAL** **\$584.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001001

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 7/1/2002  
Order No.  
Rep  
FOB

| Qty | Description                            | Unit Price |            |
|-----|--|------------|------------|
|     | Office Space and Helicopter Pad Rental |            |            |
| 1   | July 01 - July 31, 2002                | \$2,500.00 | \$2,500.00 |

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes

**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001002

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 8/1/2002  
Order No.  
Rep  
FOB

| Qty   | Description                 | Unit Price |            |
|---|-----------------------------|------------|------------|
| <b>Office Space and Helicopter Pad Rental</b> |                             |            |            |
| 1   | August 01 - August 31, 2002 | \$2,500.00 | \$2,500.00 |

### Payment Details

- ☒ Check
- ☐ Wire Transfer
- ☐ Credit Card

Name  
CC #  
Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes  
**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001003

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 9/1/2002  
Order No.  
Rep  
FOB

| Qty | Description                            | Unit Price |            |
|-----|--|------------|------------|
|     | Office Space and Helicopter Pad Rental |            |            |
| 1   | September 01 - September 30, 2002      | \$2,500.00 | \$2,500.00 |

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes

**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001004

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 10/1/2002  
Order No.  
Rep  
FOB

| Qty | Description                            | Unit Price |            |
|-----|--|------------|------------|
|     | Office Space and Helicopter Pad Rental |            |            |
| 1   | October 01 - October 31, 2002          | \$2,500.00 | \$2,500.00 |

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes

**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001005

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 11/1/2002  
Order No.  
Rep  
FOB

### Qty

### Description

### Unit Price

### Office Space and Helicopter Pad Rental

|   |                                 |            |            |
|---|---------------------------------|------------|------------|
| 1 | November 01 - November 30, 2002 | \$2,500.00 | \$2,500.00 |
|---|---------------------------------|------------|------------|

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes

**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*





# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001006

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 12/1/2002  
Order No.  
Rep  
FOB

### Qty

### Description

### Unit Price

### Office Space and Helicopter Pad Rental

| Qty | Description                     | Unit Price |            |
|-----|---------------------------------|------------|------------|
| 1   | December 01 - December 31, 2002 | \$2,500.00 | \$2,500.00 |

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$2,500.00  
Shipping & Handling  
Taxes

**TOTAL** **\$2,500.00**

Office Use Only

*Your business is greatly appreciated.*



# Hansen Helicopters, Inc.

521 E. Harmon Industrial Park  
Harmon, Guam 96913  
671-649-9580/1 fax 671-649-9582

Invoice No. 001007

## INVOICE

### Customer

Name Americopters, Inc.  
Address P.O. Box 9099  
City Tamuning Guam 96931  
Phone (671) 649-4664 Fax: (671) 649-4675

Date 12/15/2002  
Order No.  
Rep  
FOB

Qty

Description

Unit Price

Prorata billing for Insurance coverage while  
conducting flight operations from Hansen Helicopter  
hangar.

Aircraft H369H Hull and Liability Premium

|   |                                     |            |            |
|---|-------------------------------------|------------|------------|
| 1 | \$14,789.25 X 175/360. = \$7,190.75 | \$7,190.75 | \$7,190.75 |
|---|-------------------------------------|------------|------------|

### Payment Details

- ☒ Check  
☐ Wire Transfer  
☐ Credit Card

Name  
CC #

Expires

SubTotal \$7,190.75  
Shipping & Handling  
Taxes

**TOTAL** **\$7,190.75**

Office Use Only

*Your business is greatly appreciated.*

|        |          |
|--------|----------|
| Jan-01 | 10988.50 |
| Feb-01 | 13925.80 |
| Mar-01 | 10550.63 |
| Apr-01 | 20271.62 |
| May-01 | 24714.50 |
| Jun-01 | 16280.99 |
| Jul-01 | 27252.25 |
| Aug-01 | 24971.95 |
| Sep-01 | 11033.26 |
| Oct-01 | 13375.30 |
| Nov-01 | 12495.96 |
| Dec-01 | 15105.00 |

|        |          |
|--------|----------|
| Jan-02 | 23137.77 |
| Feb-02 | 27304.06 |
| Mar-02 | 22322.91 |
| Apr-02 | 17974.98 |
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| Jun-02 | 19520.16 |
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| Aug-02 | 18068.98 |
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| Nov-02 | 17681.13 |
| Dec-02 | 15326.05 |

|        |          |
|--------|----------|
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| Apr-03 | 10384.60 |
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| Aug-03 | 26760.60 |
| Sep-03 | 18006.00 |
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| Dec-03 | 19174.20 |

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|--------|----------|
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| Apr-01 | 4935.48  |
| May-01 | 7514.61  |
| Jun-01 | 5287.17  |
| Jul-01 | 10691.62 |
| Aug-01 | -153.21  |
| Sep-01 | -2849.39 |
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| Dec-01 |          |

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|--------|----------|
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| Nov-02 |          |
| Dec-02 |          |

|        |          |
|--------|----------|
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| Mar-03 |          |
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| Sep-03 |          |
| Oct-03 |          |
| Nov-03 |          |
| Dec-03 |          |

|        |         |
|--------|---------|
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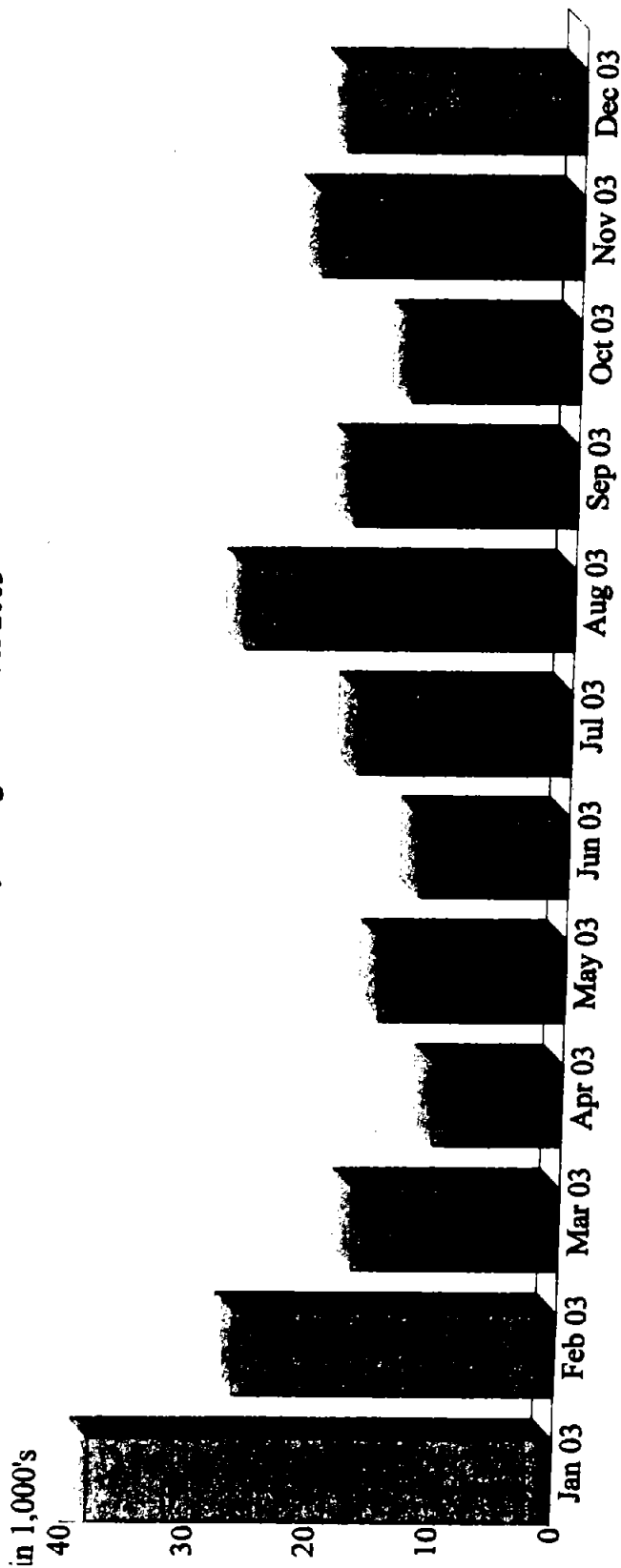
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| Jun-01 |          |
| Jul-01 |          |
| Aug-01 |          |
| Sep-01 |          |
| Oct-01 |          |
| Nov-01 |          |
| Dec-01 |          |

Summary  
July 2003

|                              |             |
|------------------------------|-------------|
| ■ FIT, Free Indep. Trav.     | %37.32      |
| ■ PMT Guam Corp.             | 19.16       |
| ■ JPI/Jal Pac Int'l.         | 12.20       |
| ■ R&C Tours                  | 10.54       |
| ■ HIS Tours                  | 5.00        |
| ■ MDI GUAM CORPORATION       | 4.27        |
| ■ Holiday Tours Micronesia   | 4.20        |
| ■ NTA/MACH                   | 3.09        |
| ■ GIT Tours                  | 2.98        |
| ■ ANA Hallo Tours (USA) Inc. | 0.81        |
| ■ Other                      | 0.43        |
| Total                        | \$17,332.22 |



# Sales by Month January through December 2003



## Sales Summary January through December 2003

|                          |              |
|--------------------------|--------------|
| PMT Guam Corp.           | %24.05       |
| FIT, Free Indep. Trav.   | 22.84        |
| JPI/Jal Pac Int'l.       | 12.83        |
| F E M A                  | 12.43        |
| R&C Tours                | 10.38        |
| MDI GUAM CORPORATION     | 4.02         |
| HIS Tours                | 3.5          |
| Holiday Tours Micronesia | 2.52         |
| NTA/MACH                 | 1.99         |
| GIT Tours                | 1.08         |
| Other                    | 3.95         |
| Total                    | \$234,419.94 |



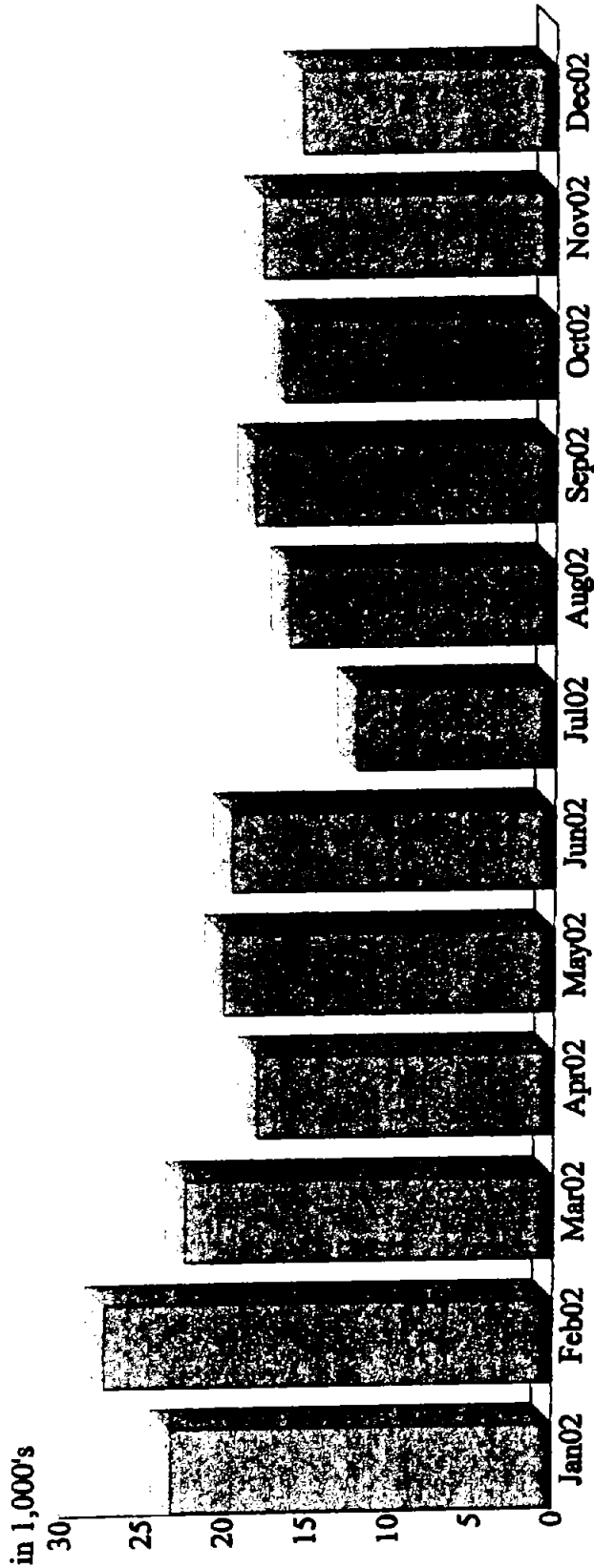
By Customer

Summary  
July 2002

|                            |             |
|----------------------------|-------------|
| JPI/Jal Pac Int'l.         | %25.75      |
| PMT Guam Corp.             | 21.63       |
| FIT, Free Indep. Trav.     | 15.93       |
| R&C Tours                  | 12.11       |
| NTA/MACH                   | 9.07        |
| ANA Hallo Tours (USA) Inc. | 5.65        |
| HIS Tours                  | 2.84        |
| Holiday Tours Micronesia   | 2.76        |
| GHI                        | 2.04        |
| HIT Tours                  | 1.16        |
| Other                      | 1.07        |
| Total                      | \$12,045.06 |

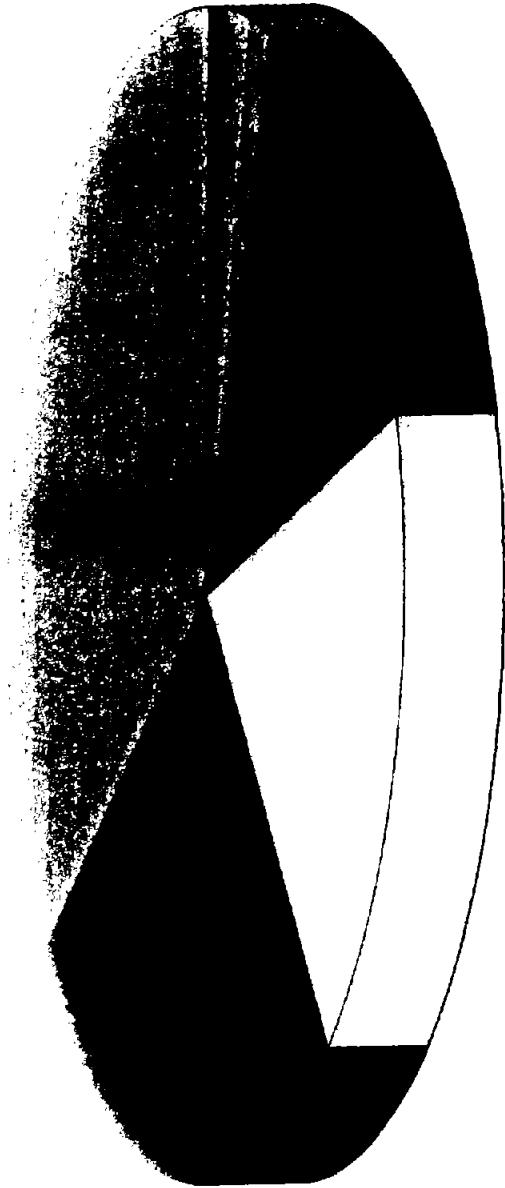


**Sales by Month**  
January through December 2002



**Sales Summary**  
January through December 2002

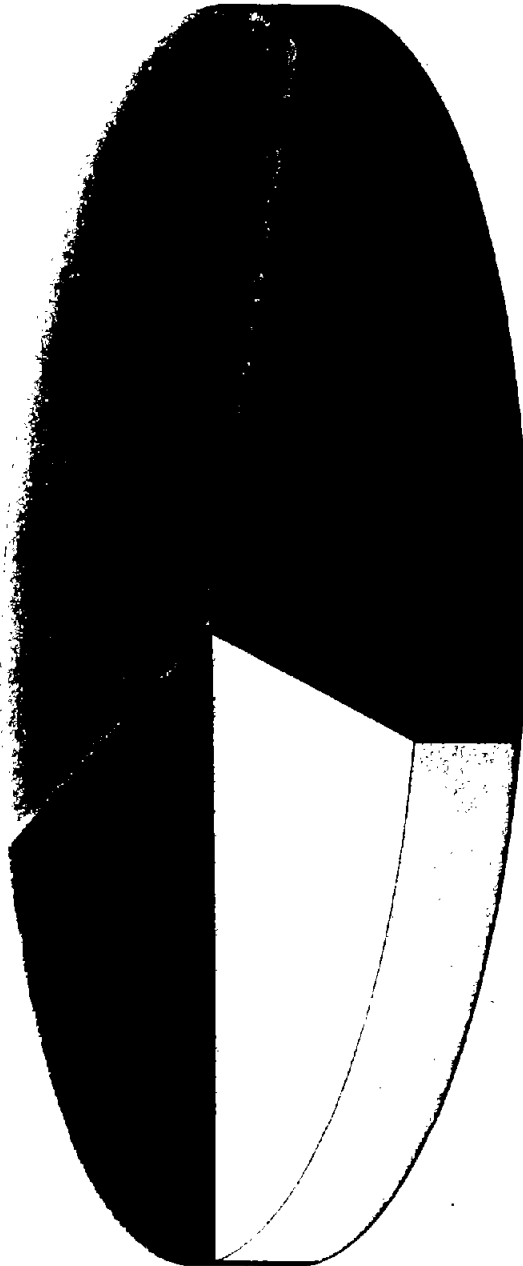
|                |                     |
|----------------|---------------------|
| BA Adult Tour  | %35.19              |
| CA Adult Tour  | 25.85               |
| A Adult Tour   | 18.97               |
| Charter Svc.   | 9.07                |
| AD Pilot Intro | 4.13                |
| BB Child Tour  | 2.07                |
| AC Child Tour  | 2.00                |
| EA Adult Tour  | 1.75                |
| CC Child Tour  | 0.70                |
| Parts (Shop)   | 0.07                |
| Other          | 0.12                |
| <b>Total</b>   | <b>\$226,005.18</b> |



By Item

Summary  
July 2001

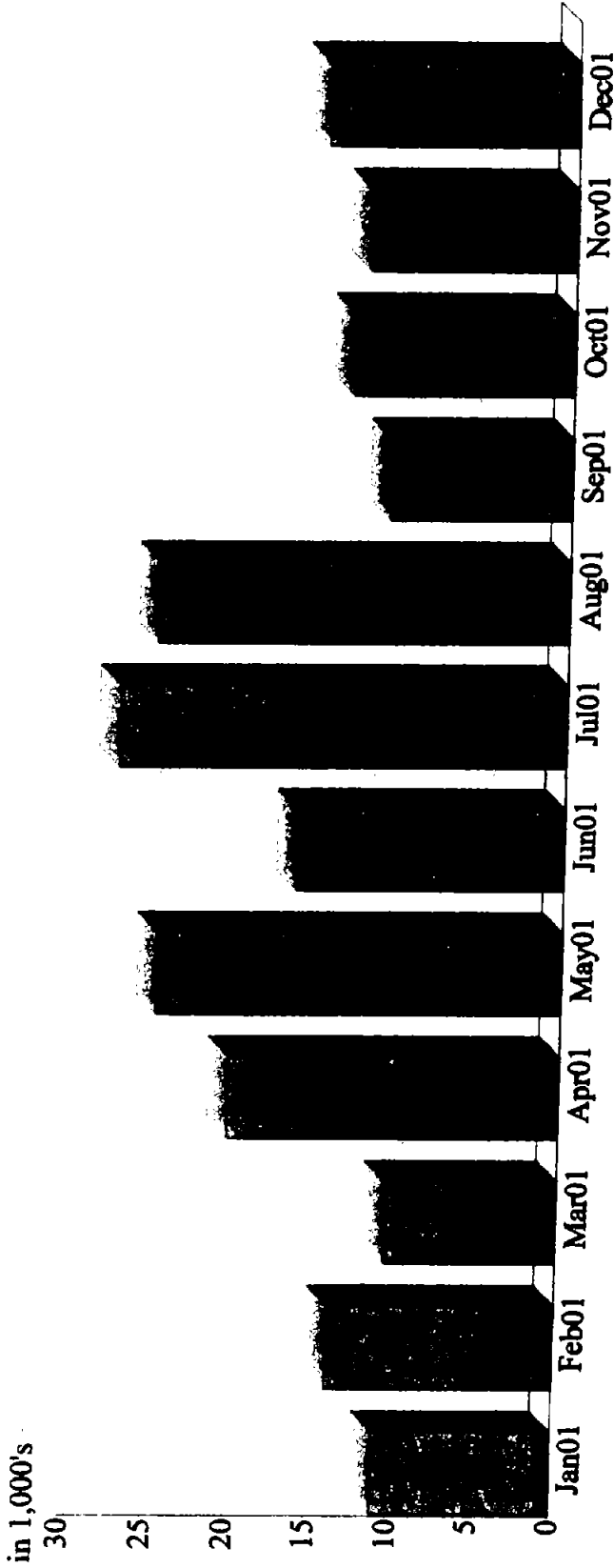
|                |             |
|----------------|-------------|
| BA Adult Tour  | %30.57      |
| Charter Svc.   | 21.25       |
| CA Adult Tour  | 20.56       |
| AA Adult Tour  | 14.58       |
| AD Pilot Intro | 4.40        |
| BC Child Tour  | 3.40        |
| AC Child Tour  | 3.31        |
| CC Child Tour  | 1.77        |
| T-Shirt Sales  | 0.16        |
| Total          | \$27,252.25 |





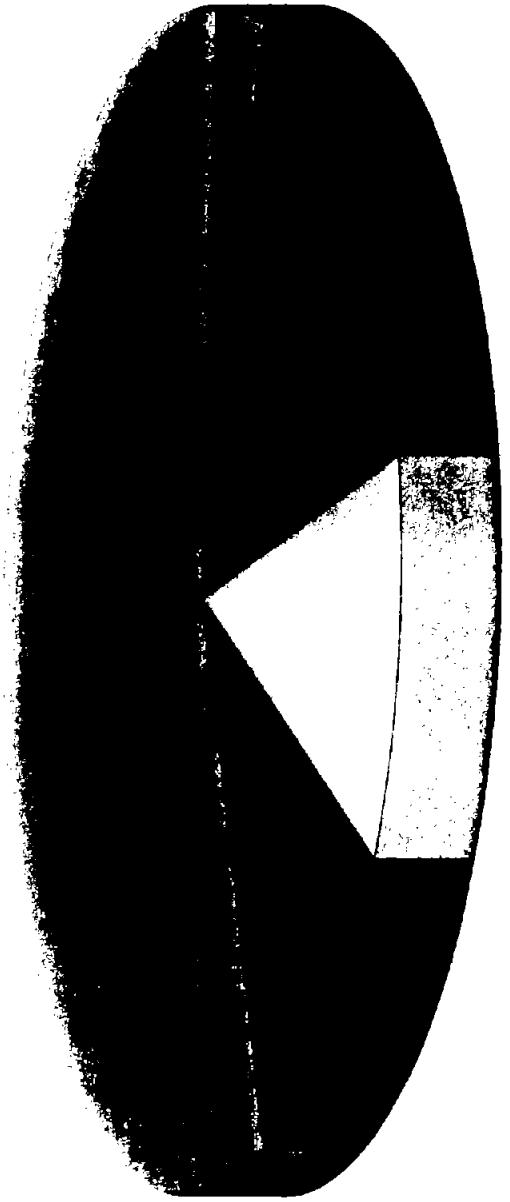
Sales by Month  
January through December 2001

Dollar Sales



Sales Summary  
January through December 2001

|               |              |
|---------------|--------------|
| AAAdult Tour  | %63.74       |
| Commission    | \$-30,153.77 |
| BAdult Tour   | 12.72        |
| CAdult Tour   | 9.87         |
| Charter Svc.  | 5.90         |
| ADPilot Intro | 4.11         |
| AChild Tour   | 1.2          |
| BChild Tour   | 1.19         |
| CChild Tour   | 0.94         |
| Other Income  | 0.15         |
| Other         | 0.11         |
| Sub-Total     | \$200,943.76 |



# CARLSMITH BALL

A LIMITED LIABILITY LAW PARTNERSHIP

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August 13, 2002

**VIA FACSIMILE [(310) 725-6816]**  
**and CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Federal Aviation Administration  
Western Pacific Region  
Office of the Regional Counsel  
P.O. Box 92007  
Worldway Postal Center  
Los Angeles, California 90009-2007

Re: Americopters, LLC; June 24, 2002 cease operations order regarding  
heli-port at Guam; Request For Hearing under 14 CFR § 13.35.

Dear Regional Counsel:

We are legal counsel for Americopters, LLC, a limited liability company operating on Guam. Americopters provides helicopters rides to tourists and operates from its own heliport located at Chucks Steakhouse, Upper Tumon, Guam.

On June 24, 2002, Honolulu Flight Standards Office issued a cease operations directive to Americopters, a copy of which is attached hereto as Exh. A. Pursuant to 14 CFR § 13.20(c), Americopters hereby contests the directive and, if it proves necessary, requests a hearing on the matter.

1. Background

On February 14, 2002, Honolulu FSDO conducted pilot checkrides and an inspection of Americopters' heliport. Principal Operations Inspector Clarence Kanae verbally noted what he considered to be deficiencies at the heliport. At the time, Mr. Kanae did not put

anything in writing, nor did he do so later despite repeated requests. As a result, on February 18, 2002, in order to confirm the heliport improvements Mr. Kanae had requested, Americopters wrote to Mr. Kanae (Exh. B). By March 3, 2002, about two weeks later, Mr. Kanae had not responded, and so Americopters re-faxed the letter. Again, Mr. Kanae did not respond. This "no response" pattern from Honolulu FSDO continued until April 2, 2002, (and continues to this day) when Americopters again faxed its February 18<sup>th</sup> letter to Mr. Kanae, for the *fifth* time (see handwritten notations on Exh. B). Even then Honolulu FSDO did not respond with even the simplest of letters either confirming the heliport improvements it had requested or not. Then, in early June 2002, Americopters' two owners and pilots went to the U.S. Mainland to look for additional aircraft to purchase (See Declarations of Jon Walker and Rufus Crowe attached hereto). Even by then, months after the initial enquiry from Americopters, Honolulu FSDO had not replied to Americopters' February 18<sup>th</sup> letter. Mr. Walker and Mr. Crowe returned to Guam July 30, 2002 and on July 31<sup>st</sup> read, for the first time, Exh. A (see Walker and Crowe Declarations).

2. FSDO's June 24<sup>th</sup> 2002 cease operations letter (Exh. A)

As stated in their Declarations, Mr. Walker and Mr. Crowe returned to Guam on July 30, 2002, on July 31<sup>st</sup> found and read Exh. A and immediately referred it to legal counsel. Americopters also wrote a letter of protest to Mr. Peter Beckner, Manager, Honolulu FSDO, and on August 5<sup>th</sup> couriered and faxed the letter to Mr. Beckner (Exh. (C)). Shortly thereafter, Americopters followed up with a phone call to Mr. Beckner, only to be told that neither Mr. Beckner nor Mr. Kanae were available to take the call, nor could the person who did take the call comment on Americopters August 4, 2002 letter. As of the date of this letter, Honolulu FSDO has not responded to Americopters, and Americopters' heliport remains illegally shut down.

3. The June 24<sup>th</sup> cease operations order violates 14 CFR § 13.20(b) and must be rescinded.

The purpose of §13.20(b) is to provide the person subject to an order under § 13.20 prior notice and an opportunity to respond, that is to say, *due process of law*. Specifically, 13.20(b) states:

- (b) Unless the *Administrator* determines that an emergency exists and safety in air commerce requires the immediate issuance of an order under this section, the person subject to the order *shall be* provided with notice prior to issuance.

Section 13.20(b) makes prior notice non-discretionary - prior notice *shall be* provided . What's more, a finding of an emergency in air commerce which warrants a cease and desist order

without prior notice is a right reserved to the *Administrator*, not field inspectors. Here, even though the Administrator did not declare an emergency in air commerce, no prior notice of the cease and desist order was given to Americopters. In the circumstances, Americopters was denied due process of law, the June 24<sup>th</sup> cease and desist order arbitrarily and capriciously violates the law, and therefore must be rescinded.

4. Conclusion & relief requested.

As explained in Americopters' February 18, 2002 letter, Americopters has always stood ready to make improvements to its heliport, without more demonstrating the purpose underlying the prior notice provision of § 13.20(b). The simple fact is that had Honolulu FSDO followed the law, we wouldn't be here.

In the same vein, before making such capital improvements to the heliport, Americopters only, and understandably, requested confirmation that once made, the requested improvements would in fact be sufficient to meet Mr. Kanae's view of what is required for safe flight operations and, more importantly, to have the heliport deemed in compliance with Federal Aviation Advisory Circular No. 150-5390-2A for heliport design. However, Honolulu FSDO disregarded due process and instead chose to arbitrarily and capriciously refuse to communicate with Americopters, shut down the heliport and ignore the consequences.

Americopters requests the following relief:

1. Immediate rescission of the illegal June 24, 2002 cease operations letter and an opportunity to respond to Honolulu FSDO's verbal request for heliport improvements.
2. Written confirmation from Honolulu FSDO, or the appropriate authority, that once agreed upon and made, the heliport improvements will be sufficient to have the heliport deemed in compliance with Federal Aviation Advisory Circular No. 150-5390-2A for heliport design and enable Americopters to continue uninterrupted operations from the heliport.
3. Once the required heliport improvements are identified and confirmed in writing, Americopters would have 90 days to install the improvements.

4. In the alternative, Americopters requests a hearing on the earliest possible date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Ledger". The signature is fluid and cursive, with a large initial "D" and a stylized "L".

David Ledger  
Attorney for Americopters LLC

DPL:jmc  
3144146.1.051998-00034